
Editorial

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Editors

1.0 ARTICLES IN THE CURRENT ISSUE

In this second issue of the *New Zealand Journal of Taxation Law and Policy* (the *Journal*) for 2020 we feature four articles. The articles cover topics ranging from: a review of Inland Revenue's Business Transformation programme; start-up compliance costs of small- and medium-sized enterprises (SMEs) in Malaysia; revisiting the source of business income in the digital era; and the implications for a state's right to impose taxes (tax sovereignty) in the light of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

In the first of the four articles, David Sutton reviews Inland Revenue's Business Transformation programme with respect to the programme's potential and its limitations. While the programme promises considerable potential for greater efficiency and an improved taxpayer experience, it also appears, in Sutton's view, to be driven by an ideological commitment to cull Inland Revenue staff numbers as a key objective rather than as a consequence of greater use of technology and improved processes. The process also appears to be driven by the paradigms of the Inland Revenue as service provider and trusted agency, in tension with Inland Revenue as enforcement agency. Arguably, Sutton continues, too little emphasis has been placed on strengthening New Zealand's tax base integrity. The potential for tax administration improvement is greater without a targeted reduction in staff and associated budget reductions, unless these reductions are an explicit objective of the process. There are a number of opportunities to improve performance in the area of "tax gap" minimisation. The author makes the case that Inland Revenue should prioritise this role over a reduction in staff numbers and that staff reductions should be de-emphasised as an objective or measure of the success of the Business Transformation programme.

Nthathi Rametse, Appadu Santhariah, Tshepiso Makara and Ken Devos, in the second article, observe that the Malaysian goods and services tax (GST) was implemented in Malaysia on 1 April 2015. GST implementation was part of Malaysia's reformation of their tax system aimed at improving the collection of revenue and reducing the country's budget deficit. GST, a broad-based consumption tax, was levied at six per cent in Malaysia, with most food zero-rated (GST-free). The authors' study examines SMEs' start-up costs of the GST in Malaysia for the period 1 April 2012 to 30 March 2015. The research particularly assesses the magnitude of the implementation costs of a new tax, thus contributing to the compliance costs literature.

A questionnaire of 68 SMEs, undertaken in June 2016, estimated the mean gross start-up compliance costs at MYR 201,831 per SME. Mean internal costs, estimated at MYR 137,399, represented 68 per cent of mean start-up compliance costs, while mean external costs, reported at MYR 64,342 comprised 32 per cent of mean start-up compliance costs. Respondents (43 per cent) supported the Malaysian Government's taxation reform, while around 50 per cent of the respondents indicated that they found GST unreasonably complicated. This, the authors argue, could explain why 41 per cent of the respondents reported that they resented doing GST work. Despite the high GST start-up compliance costs, SMEs also identified potential managerial benefits, which were expected to be derived from:

- (1) an improved accounting information system available for day-to-day business decisions (88 per cent);
- (2) improved controls to prevent theft and fraud (71 per cent);
- (3) savings in accounting costs as a result of using internal staff to keep records (60 per cent); and
- (4) better accounting information forecasting cash flow and profit (72 per cent).

Rametse et al conclude with a discussion of some policy implications for the Malaysian GST system.

In the third article, Victoria Plekhanova argues that if New Zealand wishes to tax the profits of multinational digital giants, it needs to move with the rest of the world. That requires understanding of a centre of gravity in the international debates about the source of business income in the digital era and this income's international allocation. After analysing where the interests of most countries would lie, and discussing earlier proposals made as part of the Inclusive Framework on BEPS and in the tax literature, Plekhanova explains how a choice of a particular proposal may affect the corporate income tax base of New Zealand.

Michael Hansby, in the final article, examines the recently concluded Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the CPTPP) and its implications for a state's right to impose taxes or

“tax sovereignty”. Hansby contends that a state should not be responsible under a treaty for losses caused by bona fide general taxation. Yet the number of claims lodged by investors and states under bilateral and multilateral trade and investment instruments which challenge state tax measures has grown steadily over the past two decades. This increase calls for careful consideration of the impact of new instruments such as the CPTPP. Accordingly, the author surveys important international cases about tax measures and considers how the issues raised may affect CPTPP signatories. In Hansby’s view, the CPTPP strikes a relatively moderate balance between investor and state rights in the context of modern sovereignty. But, the author argues, international “law-takers”, such as New Zealand, will need to consider whether international obligations will conflict with long-term domestic politics.

2.0 POLICY, LEGISLATIVE AND CASE LAW DEVELOPMENTS

Since our last Editorial in the March 2020 issue of the *Journal*, the legislative and policy developments have been initially busy, but since late March, the “business as usual” approach has had to give way to the implications of COVID-19. Specifically, we comment on proposals concerning unclaimed money, reforms to GST and Mycoplasma Bovis, along with the introduction of the Child Support Amendment Bill. We briefly comment on a number of developments that have occurred within the international tax area. Numerous changes have been put in place to deal with fiscal support following the unprecedented consequences of COVID-19.

We also note that the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020 received Royal Assent on 26 March 2020, after completing the final stages of the Parliamentary process the preceding week. Prior to its enactment, a Supplementary Order Paper (SOP) No 453 was released on 4 March 2020 with a number of remedial and technical amendments, including changes to clarify donation tax credit rules. The proposed amendments to the donation tax credit rules were aimed to restrict the issuance of donation tax credits and gift deductions to cash donations (including payments made by credit card or bank transfer) following a Court of Appeal decision on 17 December 2019 that ruled that under current law, donors are entitled to claim a tax credit or gift deduction on debt forgiveness. These changes were enacted.

2.1 Unclaimed Money Changes

Feedback was sought on proposed changes to unclaimed money.¹ These changes include removing the need to maintain physical registers, reducing the period of time before money is deemed unclaimed and improving Inland Revenue’s ability to match unclaimed money with people. Submissions closed 28 February 2020.

2.2 A Potpourri of Reforms to GST

An officials’ issues paper released on 24 February 2020 sought feedback on a wide range of GST-related policy issues.² The overall intention of the proposed changes is to ensure the GST rules remain current for modern business practices and technology, yet remain “fair”. The proposals include improving and simplifying tax invoice requirements, excluding cryptocurrency from certain GST and financial arrangement rules (while remaining taxable under existing income tax rules), making changes to the GST apportionment and adjustment rules, and simplifying how GST can apply to certain financial services in the managed funds industry. The closing date for submissions was pushed out to 8 May 2020 due to COVID-19.

These proposals for reform in the main should be positive for most taxpayers (with some being industry specific), although some could add further complexity and will need some refinement, possibly with some transitional provisions included with the draft legislation. It is important to note that in the supporting documents released with the issues paper, officials and the New Zealand Government will need to consider the fiscal position once some of the policy proposals have been narrowed down to preferred options. This suggests that not all proposals may go forward if they are not specifically supported by the business community. In a somewhat unusual, but welcomed, invitation, the issues paper provides an opportunity for submissions to be made on GST issues outside of those directly covered in the issues paper. It also encourages submitters to highlight any other complaints that may exist between what occurs as common business practice and the black letter law.

2.3 Mycoplasma Bovis: Income Spreading Support for Farmers

The New Zealand Government intends to introduce legislation to ensure that farmers whose herds were culled in response to the Mycoplasma Bovis eradication programme will not face an undue tax burden. The proposed changes will be included in a future tax Bill and would apply from the 2018 income year, as culls began in late 2017. The proposals have not yet been through the Parliamentary process, so they are subject to change. The Minister of Finance stated in his media release:³

¹ Inland Revenue *Unclaimed money – a tax policy consultation document* (New Zealand Government, January 2020).

² Inland Revenue *GST policy issues: An officials’ issues paper* (New Zealand Government, February 2020).

³ Stuart Nash “Tax relief for Mycoplasma Bovis farmers” (media release, 27 March 2020).

Following discussions with Federated Farmers and Chartered Accountants of Australia and New Zealand we've agreed the best immediate solution. We will change the law to allow the additional income to be evenly spread over the following six years, subject to some conditions.

The media release was accompanied by a more detailed fact sheet.⁴

2.4 Child Support Amendment Bill: Supporting Business Transformation

The Child Support Amendment Bill 2020 (the Bill) was introduced to Parliament on 11 March 2020.⁵ The proposals in this Bill are aimed at supporting Inland Revenue's Business Transformation programme and cover four important aspects of New Zealand's child support scheme:

- simplifying the penalty rules;
- introducing compulsory employer deductions;
- limiting retrospective reassessments by introducing a time bar; and
- amending the definition of "income".

The Bill also contains a number of technical amendments to assist the administration of the scheme, including to work better with customers with unusual circumstances. Amendments will principally be made to the Child Support Act 1991. As at the time of writing submissions have yet to be called for.

2.5 International Tax Developments

The Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Amendment Regulations 2020 amend the Tax Administration (Reportable Jurisdictions for Application of CRS Standard) Regulations 2017 (the principal regulations) and came into force on 26 March 2020. The principal regulations prescribe overseas territories to be reportable jurisdictions for the purposes of the CRS applied standard — the Common Standard on Reporting and Due Diligence for Financial Account Information (which is part of the Standard for Automatic Exchange of Financial Account Information in Tax Matters) — as it applies in New Zealand. Reportable jurisdictions are territories to which Inland Revenue may provide certain information about non-residents that is reported to Inland Revenue by financial institutions in accordance with the CRS applied standard. The six territories listed in regulation 4 of these regulations are added as reportable jurisdictions for reporting periods beginning on or after 1 April 2019. Section 226D(2) of the Tax Administration Act 1994 allows for the retroactive application of these regulations.

The Double Tax Agreements (Switzerland) Order 2020 came into force on 26 March 2020 and replaced the Double Taxation Relief (Switzerland) Order 1981. This order gives effect to a protocol, signed on 8 March 2019, that amends the convention. The Double Tax Agreements (Guernsey) Amendment Order 2020 came into force on 26 March 2020 and amends the Double Tax Agreements (Guernsey) Order 2010 (the principal order).

2.6 COVID-19: The Defining Issue for 2020

The defining issue of 2020 looks to be COVID-19. It would come as a complete surprise if any of our readers are not familiar with COVID-19 and its implications for their work and life in general. It is not our intention to go over COVID-19 in general, but to note that the New Zealand Government from a fiscal perspective has instigated major fiscal stimuli to the economy, with significant tax implications.

On 17 March the Minister of Finance announced a business package containing proposed measures to support businesses affected by the coronavirus outbreak. The tax-related measures include:

- reintroducing building depreciation to help encourage investment in industrial and commercial buildings;
- increasing the allowance to expense low-value asset purchases from \$500 to \$5,000 for a one-year period, with a \$1,000 allowance after that;
- relieving small business owners of the requirement to pay tax through the provisional tax system by raising the threshold from \$2,500 to \$5,000;
- allowing the Commissioner of Inland Revenue to cancel use-of-money interest on underpayments of tax for taxpayers unable to pay tax on time due to the outbreak; and

⁴ Inland Revenue *Proposed amendments for Mycoplasma Bovis: Fact Sheet* (March 2020).

⁵ Stuart Nash "Fairer administration of child support scheme" (media release, 11 March 2020).

- allowing Inland Revenue to share information with government departments to help these agencies provide assistance in relation to the outbreak.

On 24 March 2020 an Order in Council (Goods and Services Tax (Grants and Subsidies) Amendment Order 2020) was made which confirms that the leave payment and wage subsidy announced as part of the Government's Economic Response Package to COVID-19 would not attract GST. This clarification was necessary as generally, GST-registered businesses receiving government grants and subsidy payments are required to return GST on payments received. This Order in Council adds these payments to the schedule of non-taxable grants and subsidies.

The package was introduced into a Bill that was enacted under urgency on 25 March 2020 and received Royal Assent the following day. The COVID-19 Response (Taxation and Social Assistance Urgent Measures) Act 2020 specifically makes changes in the following areas:

- *Restoring building depreciation.* This supports businesses and encourages investment in new and existing buildings by reinstating depreciation deductions for non-residential buildings. It provides business support by improving cashflow in the near-term and assists with the broader economic recovery by stimulating business investment in new and existing buildings.
- *Increasing the provisional tax threshold from \$2,500 to \$5,000.* This relieves the compliance burden for small businesses as well as freeing up cashflow. It allows people to delay paying their provisional tax. They can wait until 7 February in the year following the year they file their return before they have to pay, instead of having to pay in instalments throughout the year. It allows them to retain cash for longer. It will benefit an estimated 95,000 people.
- *Allowing immediate low-value asset write offs.* To encourage spending, the change will temporarily increase the threshold of the value of assets which can be deducted in the year the asset was purchased. The threshold will increase from \$500 to \$5,000 for assets purchased in the 12 months from 17 March 2020 (reducing to \$1,000 from 17 March 2021).
- *Bringing forward broader R&D refundability.* The amendment brings planned refundability measures forward by one year, to the 2019–2020 income year. This will help relieve cashflow problems, encourage businesses to retain their R&D staff, and (where possible) support these firms to continue their R&D in the current environment.
- *Allowing use-of-money interest to be waived.* The Act allows Inland Revenue to cancel interest on a late tax payment if the taxpayer's ability to make a payment due on or after 14 February 2020 was significantly adversely affected by the COVID-19 outbreak.
- *Allowing greater information sharing.* This allows Inland Revenue to share information with a wider group of government agencies to assist the efficient and effective delivery of the Government's COVID-19 response.
- *Allowing more access to the in-work tax credit.* This ensures that working families whose working hours are reduced as a result of COVID-19 will not lose their eligibility for the tax credit. Around 19,000 families will benefit.

Unprecedented times warrant unprecedented speed in law reform, as major fiscal changes of this nature would rarely be considered to be enacted under urgency.

3.0 ADVANCE NOTICE

The September 2020 issue of the *Journal* will be a special issue with selected papers presented at the International Conference of Chinese Tax and Policy held at the University of Auckland on 8–9 December 2019. Professor Julie Cassidy of the University of Auckland will be the Guest Editor for this issue.